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- COMMUNICANTS AND THE DECEASED WIFE'S SISTER'S ACT, 1907. *G. A. Ring*. A discussion of a decision in an Ecclesiastical Court construing the act. 34 L. Mag. & Rev. 68.
- COMMUTATION TICKETS AND RATE REGULATION. *Borden D. Whiting*. Contending that certain decisions which hold that the Interstate Commerce Commission may not require special rates for commutation tickets are not sound. 8 Colum. L. Rev. 636.
- DELAYS OF THE LAW, THE. *William H. Taft*. Emphasizing the injustice caused by delay and suggesting remedies. 18 Yale L. J. 28.
- EARLY HISTORY OF THE ATTORNEY IN ENGLISH LAW, THE. *Heinrich Brunner*. 3 Ill. L. Rev. 257.
- EFFECT OF WORDS OF CONDITION IN A DEED. *Albert Martin Kales*. Submitting that whether words amount to a condition or to a covenant should be determined without regard to external circumstances. 3 Ill. L. Rev. 280.
- EMPLOYERS' LIABILITY TO WORKMEN. *Anon.* A comparison of the English and Canadian statutes. 44 Can. L. J. 716.
- EXTENT OF THE JUDICIAL POWER OF THE UNITED STATES, THE. *Simeon E. Baldwin*. Criticizing certain recent dicta which intimate that all judicial power not expressly reserved was given to the Supreme Court by the Constitution, including that commonly regarded as vested in the states. 18 Yale L. J. 1.
- FAR-REACHING DECISION BY THE COURT OF APPEALS, A. *W. A. Purrington*. A discussion of a New York case which holds that a physician's privilege is waived if his patient testifies. 15 Bench & Bar 53.
- GREAT JUDICIAL CHARACTER, ROGER BROOKE TANEY, A. *Charles Noble Gregory*. 18 Yale L. J. 10.
- LAW IN ITS RELATION TO THE CHILD, THE. *Lewis Hochheimer*. 67 Cent. L. J. 395.
- MECHANICAL JURISPRUDENCE. *Roscoe Pound*. Objecting to unreasonable technicalities. 8 Colum. L. Rev. 605.
- NEW YORK CLEARING HOUSE DURING PANIC AND VIEWS ON GUARANTEE BANK DEPOSITS AND CURRENCY LEGISLATION. *Alexander Gilbert*. 6 Law & Com. 351.
- ORGANIC CONCEPTION OF THE TREATY-MAKING POWER VS. STATE RIGHTS AS APPLICABLE TO THE UNITED STATES, AN. *Charles Sumner Clancy*. 7 Mich. L. Rev. 19.
- OUR UNDERPAID JUDICIARY. *Lindsay Russell and Ralph W. Page*. 41 Chi. Leg. N. 144; 12 L. N. (Northport) 168.
- SOME EXPERIMENTS IN DIRECT LEGISLATION. *Robert Treat Platt*. A study of the working of the Initiative and Referendum in Oregon. 18 Yale L. J. 40.
- SOME MODERN APPLICATIONS OF THE WRIT OF PROHIBITION. *John A. Ferguson*. 6 Com. L. Rev. 16.
- SOME NEW ASPECTS OF PARTNERSHIP BANKRUPTCY UNDER THE ACT OF 1898. *Charles M. Hough*. Suggesting that the act gives reason to believe that a partnership should be considered more as an entity than heretofore. 8 Colum. L. Rev. 599.
- TESTAMENTARY POWER UNDER HINDU LAW. *S. Venkatachariar*. 10 Bombay L. Rep. 177.
- WRIT OF HABEAS CORPUS, THE. *Clarence C. Crawford*. A history of the writ. 6 Com. L. Rev. 23.

II. BOOK REVIEWS.

THE TREATY POWER UNDER THE CONSTITUTION OF THE UNITED STATES.
By Robert T. Devlin. San Francisco: Bancroft-Whitney Company. 1908.
pp. lxx, 864. 8vo.

This stout volume covers the law of treaties under our Constitution and of cognate subjects arising therefrom. The constitutional provisions are first dealt with; then follow a consideration of the making, taking effect, and termination of treaties; of their construction; of the extent of the treaty-making power; of the legal questions relating to their conflict with national and state legislation; of particular classes of treaties, such as those cession extradition, and with the Indians. The book concludes with chapters on our foreign ambassadors, ministers, and consuls; naturalization and expatriation; respon-

sibility of the government for mob violence; and claims against the government. On many of these topics Mr. Devlin has not, of course, been the first in the field. Mr. C. H. Butler in "The Treaty-Making Power of the United States" has dealt adequately, in 1902, with the history and judicial decisions affecting the treaty-making power in this country; Professor J. B. Moore has covered thoroughly the subjects of extradition and of diplomatic relations in his "Treatise on Extradition and Interstate Rendition," and "Digest of International Law."

The present work, however, is the first volume on this branch of our law which has been published since the recent controversy between the United States and Japan in regard to the right of the Japanese children to attend in San Francisco the public schools to which children of resident citizens of other countries were admitted. This controversy presented two questions: first, the preliminary one whether the right to attend the public schools was a right of residence within the meaning of the treaty and whether there was a deprivation of that right in the segregation of Japanese by the school board; and, second, if this right were established in favor of the contention of the Japanese, did the United States have the legal power to make a treaty which should be superior to the laws of a state? Mr. Devlin gives at length the opinion of the Department of State in support of the superiority of the treaty, and summaries of and quotations from the contemporary expert comment, which, apart from the debates in Congress, generally sustains the same view. Not long ago, we have indicated that the treaty-making power, though in some respects limited, would probably extend to this subject; but we have also suggested that, granting that "rights of residence" included educational privileges, no rights of the Japanese were violated in this case, inasmuch as not only "native citizens" but "citizens of the most favored nation" are constitutionally subject, where appropriate legislation exists, to segregation in schools provided they receive treatment equal to that of pupils elsewhere. 20 HARV. L. REV. 337-339.

The chief merits of the present work must be found in the presentation of the aspects of the main subject which have developed since Mr. Butler's work in 1902; in a somewhat fuller consideration of the topic of construction of treaties than has yet been made; and, generally, in the benefit to the profession through a new development by a qualified and agreeable writer of subjects which have been already skillfully dealt with by other authors. J. W.

WATER RIGHTS IN THE WESTERN STATES. By Samuel C. Wiel. Second Edition, Revised. San Francisco: Bancroft-Whitney and Company 1908. pp. lxix, 974, 800.

Mr. Wiel's book brings down to a recent date the work of Pomeroy as applied to the Western States, with especial reference to the doctrine of appropriation, a subject which occupies more than half the volume.

Little has been added to the doctrine of riparian right as developed in California, though slight changes in its relations to other sources of title are brought out by late decisions.

The law of appropriation chiefly treated in this book has received its legal sanction in comparatively modern times, though the attempts to gain rights by mere priority of occupation have no doubt been among the earliest of human endeavors. There is some confusion in the use of the word "appropriation." This confusion occurs in statutes and decisions. The Constitution of California, Art. XIV, § 1, declares that "the use of all water now appropriated, or that may hereafter be appropriated for sale, rental, or distribution, is hereby declared to be a public use." The word "appropriated" here means "applied," or "devoted," and does not connote any method of acquisition. *Merrill v. Southside Irr. Co.*, 112 Cal. 426. In *Katz v. Walkinshaw*, 141 Cal. 116, and *Burr v. Maclay Rancho*, Oct. 16, 1908, 36 Cal. Dec. 315, the users of underground water, in the one case coming from artesian wells and in the other case pumped from an underground basin, are spoken of as "appropriators for use on distant lands," though this cannot strictly refer to statute rights, acquired by